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LEGAL EDUCATION.

By

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"Legal education is the second subject referred to earlier (ante pages 29 to 32) as one that could be dealt with even before a questionnaire is issued by the Law Commission. This subject also is a vast one and one feels a certain sense of cramp when dealing with it in these columns, because of the inescapable pressure for space. A brief outline is, therefore the only possible method of dealing with the subject and that is attempted below.

Introduction.

The term "Legal Education" is too well-known to require any definition. For the purpose of this Article, it may be considered under four heads, appropriate to four different categories of persons:—A. For the general public, B. for the entrant to Legal Profession, C. Specialised Legal Education and D. for the clerical and administrative staff in Courts of Justice.

One is not quite sure whether the classification above suggested was present to Government when it appointed the Law Commission. If a guess could be made, the second of the above heads alone was probably in contemplation. Having regard, however, to the comprehensive nature of the inquiry and of the subject under notice, it would appear to be permissible to deal with it in the manner suggested above.

A—Legal Education for the General Public.

"Ignorantia Juris Non Excusat" is a well-known maxim. Free India, like other countries, believes in this maxim and enforces it in its full rigour. The coralary seems to be plain. It is the duty of the State to acquaint its citizens, in such manner as is suitable, with a knowledge of at least the elements of the Law. Some attempt in this direction was, indeed made, by Government, some time back, when it broadcast from the All India Radio Delhi Station a series of talks on "Law for the Laymen". Madras also was represented among the speakers. That was Mr. V. L. Ethiraj, as well-known for his long and bright career as Public Prosecutor of undivided Madras as for his multifold munificence. Good as these talks undoubtedly were, no one could pretend that these few talks could have touched more than the fringes of the problem. For one thing, the talks were delivered in English Language and were too brief, in all cases, taking under half an hour.

One would like to suggest in this connection that it is the duty of the Bar as much as that of Government to confer together and to devise an appro-

priate machinery for imparting Legal Education, at least in an elementary form to the general public.

B—Education for the Entrant to the Legal Profession.

There are no doubt today several Law Colleges in the country functioning under different Universities, each with its own pattern for the curriculum. It must, however, be said that the present system of imparting Legal Education is not really needed nor, is really helpful for the intended practice at the Bar. These Law Colleges generally serve more as useful sources of Revenue and as providing comfortable jobs for a few individuals than provide a necessary and indispensable course of education for the would-be-Lawyer. Many instances may be probably given of many distinguished Lawyers who navertheless had played the truant during their term in the Law Colleges. The study of law does not appear to require any special coaching or any tutorial guidance as for example, the study of other professional subjects like Medicine and Engineering. One should think that any graduate of an University should be allowed, after a certain prescribed period to sit for the qualifying Examination and seek to get a pass therein. Some specific suggestions are made in the next succeeding paragraph.

1. Before an University graduate is allowed to sit for a Law Examination, he must be required to satisfy some conditions:—(a) During his graduation, he must have taken Law as one, or the only one subject besides any language subject that might be otherwise prescribed. (b) A certain period to be prescribed must elapse after the graduation, and this, on the analogy of students being required to wait for some time before they are allowed to appear for the M.A., Degree. 2. The syllabus for the Degree Course as also the syllabus for the Law Examination should be carefully thought out and prescribed. 3. Pre-eminently, one should think, it is the Bar Council which should have the dominant if not the exclusive voice in prescribing the appropriate syllabus. 4. Tht number of examinations that have to be passed and the interspacing of these examinations must also be similarly left to the Bar Council. 5. A period of apprenticeship also should be compulsorily required to be undergone in all cases: such requirement is not universal today in India. 6. If the long desired All India Bar Council comes into being, it should be naturally expected to have the authority and the credentials to prescribe the necessary standards.

C—Specialised Legal Education.

On this head, it must be stated with regret that India is somewhat lagging behind other modern countries, although in point of the general equipment and efficiency of its Bar and its Judiciary, it is probably one of the foremost countries in the modern world. There is plently of legal talent in the country: only, it requires to be discovered, tapped and encouraged. If only some attention could be devoted to the subject, India could very soon boast of having an institution of the type of the Harvard Law School and Journals of the standing and reputation of the Law Quarterly Review or the Cambridge Law Journal. The Madras Law Journal has indeed a great tradition but its attention is split between its two sections, the Reports and the Journal section and, under a long standing practice, greater attention has been all along devoted to the former section. No doubt the Journal Section and, therein, the editorial notices are in no way inferior in standard to those in Western Journals, but one would like to see the day when India would have its Law Journals exclusively devoted to theoretic and abstract study of Law and the formulation of Legal principles. The same remarks apply in more or less degree to the Calcutta Weekly Notes,

Reference, must, in this connection, be made to the famous Tagore Law lectures some of which, in fact, many of it are legal master-pieces. It would be difficult to find material in other countries as brilliant as U. N. Mitra's lectures on Limitation and Dr. Rash Behari Gose on the Law of Transfer.

If a suggestion could be made, a Journal of the tradition and resources of the Madras Law Journal may be well expected to sponsor the establishment of an institution of the type indicated. In that case, it is entitled to call upon the Government to take its own share of the necessary financial burden. An All India Institution is a desideratum and Madras, with its rich legal traditions, may be appropriately suggested as a proper venue for such an institution.

It has to be added finally on this subject that in order to ensure the achievement of such an ideal, the necessary climate requires to be created from the lowest levels. In the Madras State today, even children are required to take as one of their subjects, "Civics", which relates to the structure of the Governmental and Local administration. It would be a great thing if the subject of Law were to be prescribed in an elementary form in the school classes at an appropriate stage and to be prescribed as one of the optional subjects for the Secondary School Leaving Certificate Examination and also for the Pre-University Course shortly proposed to be introduced for the Madras University as well. It would also be desirable to prescribe a rule that no one could enter the legal Profession unless he had studied Law as a subject from his school days onwards. It would be equally necessary to prescribe that no one could be admitted into the clerical or alministrative service of Law Courts unless he had taken the subjtct of Law at least upto the Pre-University level. A rule of the type of the first one suggested would ensure that no one drifts into the legal profession or drifts out of it as is unfortunately too often the case today. The creation of such a climate on some such lines as suggested above would help provide the material out of which the future Masters of Law and legal experts of the country could naurally evolve.

D—Administrative staff in Law Courts.

It is notorious fact today, that most of the clerical and administrative staff of the Law Courts have had nothing to do with the study of Law in any form before entering on their duties. Only those who have had experience of Law Courts could appreciate the numerous difficulties which arise from this regrettable state of affairs. If the suggestions mentioned in the preceding paragraph were to be accepted and implemented, the Courts may rely on a competent staff to carry out the assignments intelligently and expeditiously.

Conclusion.

The views breifly formulated above may appear, to some minds, to be temerarious and even iconoclastic. Unconventional they probably are, but, there appears to be little reason for being apologetic and much less, repentent. It is for the learned profession to consider them.

VALIDITY OF MADRAS ACT XVI OF 1951.

INCREASING SMALL CAUSE JURISDICTION OF SUBORDINATE JUDGES BEYOND RS. 1000.

BY

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The Articles so far published in the Law Journal on the above subject have overlooked Article 372 of the Constitution read with Article 246 (3). Article 372 furnishes a complete answer to Mr. Narayana Rao's question. Under Article 372, "the law in force before the commencement of the Constitution" (which will include the Central Act IX of 1887), shall continue in force ***until altered or repealed or amended by a competent legislature or other competent authority***. Under Article 246 (3), the legislature of a Part A or Part B State has ***exclusive*** power to make laws for any such State with respect to any of the matters enumerated in the State List. So, the combined effect of these two Articles is that the Central Act stands automatically amended so far as Madras State is concerned, by Madras Act and there is no question of the Madras Act being ***ultra vires***. And so, there is no need to invoke either Article 254 by analogy or the ***Latin Maxim***. The ***Latin Maxim*** can be of no avail, if the State had no power to interfere with the earlier Central Act.

It has been assumed by me as well as in all the discussion so far, by others that the trial of a case as a Small Cause suit comes under the head "Administration of Justice or Constitution and organisation of Courts" (Entry 3 in the State List). Article 65 is not of any importance, as it only says (omitting words which are not relevant for our present purpose) "jurisdiction and powers of Courts with respect *to any of the matters in this List*." If the subject does not come under this entry, it may not come under any other specific head in any of the lists, with the result that it will come under the residuary Entry No. 97 in the Union List, "Any other matter not enumerated in List II or List III" and the State Legislature will have no power over the subject. The words "Administration of Justice" are, however, wide enough to cover the subject of power of a Court to try a case as a small cause suit and so Act XVI of 1951 seems to be quite within the competence of the State Legislature. If it is a concurrent subject, as the President's assent does not appear to have been taken, Article 254 cannot be invoked.

BOOK REVIEWS.

Special Marriage Act (XLIII of 1954) by V. S. Kulkarni, Advocate, Bombay. Published by Law Book House, Laxmi Road, Poona 2. Price Rs. 6. (1955).

One of the more important legislations undertaken by our Government in the field of social reform is the new Special Marriage Act, 1954. A special Marriage Act of 1872 has been in existence in our country with a limited application. The present Act is on the same lines generally with certain marked differences in its applicability and operation. Permissive laws that regulate the personal relationship of parties have to depend on popular support for its success.

Judged by by this test of public popularity it is highly debateable how far and how long the present Act will be a live wire in our society. Even during the passage of the measure in the Parliament opinions were sharply divided. The wisdom of placing such legislations on the statute book was doubted. Whether our social ways and customs and set up in general would benefit by such legislation was questioned.

It was said that the legislation was being forced by a few upon an unwilling majority and it had the effect of disturbing the traditional concepts of our religion. That the measure is highly controversial and is fraught with grave risks needs no emphasis. While the intention of the legislature may be good, the potentialities of mischief of the weapon given by the law cannot be underestimated. But the measure has come to be and the public should know its implications.

The Author of this small commentary on the provisions of this enactment is known to the legal profession by a number of his prior publications. His present book will be welcome as a timely publication on a topical subject.

Explanatory notes with pleading and practice under the sections on the basis of analogous law would have been more useful than the separate printing of case-law in the appendix.

RECORDS OF THE INTER GOVERNMENTAL COPY RIGHT CONFERENCE, Published by the United Nations Educational Scientific and Cultural Organisation, 19 Avenue Kle'ber, Paris-16. Royal Soil, 415 pp. Price $3.50; Rs. 21; Fr. 1,000. Available at all National Distributors of UNESCO Publications—Messrs Oriental Longmans, Ltd., 36-A, Mount Road, Madras.

This bulky volume of 415 pages contains proceedings of about 50 countries that met at Geneva between the 18th August, and 6th September, 1952, at the Inter-Governmental Conference. India also took part in the Conference. In addition to containing the minutes of the proceedings the book under review contains, the text of the Universal Copyright Convention. Text of the three Protocols List of participients, Index of States Organisations and Personalities Advocates of conventions and a subject Index. Among the many institutions founded by the United Nations Organisation, UNESCO is one and its main object which is entrusted in its first Article is that of maintaining increasing and diffusing knowledge "by assuring the conversation and protection of the worlds inheritance of books, works of art and monuments of history and science and recommending to the nations concerned the necessary International Convention." And one of the methods by which this object is to be realised is that the organisation must initiate "methods of international cooperation calculated to give the people of all countries access to the printed and published materials produced by any of them". And at the suggestion of the Belgium Government the international problem of copyright was included in the UNESCO programme.

"The actual law of nations" observes Mr. Curtis "knows no exclusive right of an author to the proceeds of his book, except, that which is enforced by the municipal law of his own country which can operate nowhere but in its own jurisdiction. As soon as a copy of a book is landed in any foreign country, all complaint, of its republication is, in the absence of a treaty fruitless because of no means of redress exist, except under the law of the authors own country. It becomes public property not because the justice of the case is changed by the passage across the sea or a boundry but because there are no means of enforcing the private right" (Copinger on Copyright 6th Edn. pp. 271.)

Originally a book written by a foreigner and published abroad could not obtain any protection here. To remedy this defect prior to 1886 international copy right was regulated by treaties. The general object was to secure to the authors of works first published in one of the treaty States the same privileges in the other States as would have been enjoyed if the work had been first published there. In 1885, an attempt was made by several great Powers meeting in Conference to secure uniformity in the matter. Great Britain was a party to this conference which resulted in the framing of a convention known as the Berne Convention. Under it the contracting States were "constituted into a Union for the protection of the rights of the authors over their literary and artistic works." (Copinger pp. 272). It is in furtherance of this policy that the Imperial Copyright Act 1911 was passed by Great Britain which was adopted in India in 1914 by our Copyright Act. We have passed a long way from Berne Convention and in the changed circumstances of the world today a universal convention has become a necessity. The UNESCO is general Conference held in Mexico in 1947 established a Copyright Division and form that year till 1951 four committees of experts were at work. They prepared a draft of the Universal Copyright Convention which was sent to all Governments of the world. The replies received served as the basis for the proceedings of the Conference.

The preamble of the conventions says that a universal "copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding."

The first Article says that each contracting State shall extend to work originating in other States the protection it gives to works of its own nationals both as regards published and unpublished works. The work should bear the symbol. C accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright. The other articles deal with the definition of copyright, translation rights, definition of publication retroactivity and procedural matters. Indias contribution to the debates and its conclusions are noteworthy. The book will serve as a great help to all students of International law on copyright to understand the subject. The proceedings will enable the average reader to appreciate the Articles.

BOOK REVIEWS.

THE LAWYER.

The Madras State Bar Federation may well be proud of having realised "one of the long cherished objects of its founders" with the bringing out of their official organ, aptly called "The Lawyer". "The Lawyer" as we understand, is at present a quarterly, and so we shall be able to hear its 'lusty natal' voice only four times a year."

"The Lawyer" has set for itself a great objective. We are told that it will be not merely the spokesman of the legal profession but that it will concern itself in enabling the ordinary citizen of India to understand and abide by the Rule of Law. During the period of transition in India, when the whole fabric of society is undergoing a vast and complete change, the need for such a forum of enlightened thought and a medium to propagate the sound views advocated by men of learning, cannot be over-emphasised. We have no doubt that, with the excellent personnel guiding it, "The Lawyer" will meet with success in its endeavours.

The first issue which has been received by us contains an impressive array of contributors and the subjects dealt with are so varied and absorbing that not merely a lawyer but also the layman will find it interesting to read.

With the regular law journals in the country getting wholly absorbed in reporting the ever-growing volume of case-law, they have neither the time nor the space to cater to the wider public who might have a need for knowing the law. Sometimes the lawyer likes to turn to the lighter side of his profession—if at least as a relief from the dry routine.. There are no journals in this country that provide such an entertainment to a lawyer. The excellent journal 'Case and Comment' published by the Lawyers' Co-operative Society, New York, has been serving a very useful purpose in this direction for the past several decades. We are glad that a section of "The Lawyer" is devoted to quips and quirks, nice jokes and racy experiences and incidents which are at once interesting and instructive.

We wish "The Lawyer" a long and successful career of service for the public and the profession.

LAW AND PRACTICE OF INCOME-TAX by *Kanga* and *Palkhivala*, third edition 1955, N. M. Tripathi Ltd., Bombay-2 Price Rs. 40.

Making its first appearance in the field of legal commentaries in 1950 this excellent handy volume on the "Law and Practice Income-tax in India" has gained a place for itself among the public and the professions. The popularity of the book is evident from the necessity of its editions in such short intervals.

We had occasion to review the previous editions of this work in our columns. Needless to state that the present edition retains all the fine aspects of the previous editions. Clear and exhaustive notes under each section, well documented by case-law, English and Indian, critical comments on certain provisions of the Act, useful elucidation on doubtful points are all features of the book that have made it so useful and popular.

But we would like to point out that the Authors ought to have given reference in the citation of cases to the regular Law Journals, like Indian Law Reports, All-India Reporter, Supreme Cour Journal, Madras Law Journal and many local law journals of S ates like Bombay Law Reporter or Calcutta Weekly Notes, instead of confining the citation to the Income-tax Reports only. The waylaw reports

are multiplying is bad enough. It is worse when reports are devoted specially to particular classes of cases, whatever their utility or popularity. A practising lawyer would like to have a report that covers the entire case-law on all subjects instead of going in for one kind of report for each subject. It cannot be denied that most of the important Income-tax cases are reported in the regular law journals and reports and a reference to those reports would make the book more useful to the lawyers.

The book with its commentaries on Income-tax Act and the useful allied Rules and Statutes in Part II is bound to receive the same warm support as its earlier editions. The printing and get-up of the book is quite good, keeping up the traditional high standard of the publishers.

THE BOMBAY RENT ACT by *J. H. Dalal*, B.A.LL.B., Advocate, High Court, Bombay (2nd Edn. 1955), published by N. M. Tripathi, Ltd., Bombay. Price Rs. 12-8-0. Foreword by the Hon'ble Mr. Justice J. C. Shah, High Court, Bombay.

The Rent Control Legislation is probably one of those few emergency measures, affecting the community at large, that is still alive. With the abolition of controls in many spheres it was expected in several quarters that the control over rents and lettings of houses would also be lifted leaving the landlords and tenants to adjust themselves. It was even thought that this legislation has become a spent force. But the facts have proved otherwise. Whatever may be said about the conditions in the smaller towns in the Districts, it cannot be denied that the problem of accommodation in the bigger cities is still acute. The tendency on the part of many houseowners to rack rent on threat of eviction has still not completely disappeared and the situation of shortage of accommodation is being exploited though not to the same extent as in the war days.

Though the legislation itself began as a war measure and was intended to be in force for a short duration it has been extended in almost all the States of the country and is kept in force even now. In England where also Rent Restriction Acts started as an emergency measure due to the situation created by the world war, it has become a permanent legislation on the Statute Book. In our country too, though the scope and extent of the control might diminish in course of time, it is highly doubtful if complete decontrol in this sphere is possible in the near future.

The book under review is a commentary on the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 as amended, which is the Act now in force in that State. The earlier Acts repealed by this Act are given in the appendices. The Rules and Notifications under the Act are also given. There is a good topical discussion of the subject profusely documented with case-law. But one finds omissions here and there of even the more important decisions under analogous statutes in other States. As an illustration there is no reference in the commentaries under section 10-C at pages 90 to 92 of the book to the Full Bench decision of the Madras High Court, rendered under the analogous Madras Act, which lays down elaborately he tests to determine whether a building is residential or non-residential. Similarly in the notes under section 13 there is no reference to the several Madras decisions that contain a good exposition of the law. The inclusion of those decisions would have enhanced the value of the book. The reference to English decisions are quite adequate and useful. The book is bound to be greatly appreciated by the Bench and the Bar.

THE HINDU MARRIAGE ACT (XXV of 1955) by *D. H. Chaudhari*, B.SC., LL.B. Pleader, with a Foreword by the Hon. H.V. Pataskar, Law Minister, Government of India, Eastern Law House, Calcutta. Price Rs. 10/-.

The Hindu Marriage Act recently placed on the statute book is yet another step in the direction of adapting and codifying the Hindu Law to suit modern

conditions. The principle behind the legislation, as far as it relates to prevention of bigamous marriages, is not new as several States like Madras and Bombay had similar legislations for some years past. What is really revolutionary is in the provisions relating to Divorce and Judicial Separation. A limited right of divorce has been in vogue in this country in recent years. But this Act has extended the principle and scope to a greater extent.

The wisdom of a legislation of this kind in the present set up of our society is highly debatable if not doubtful. The great controversy it has evoked in the Parliament during the passage of the Bill in the two houses is evidence enough of the sharp difference of opinion among enlightened thinkers. The Special Marriage Act, 1954, another social legislation of our Government, repealing the earlier Act, has made great changes in the law relating to husband and wife within its limited sphere. Similar presumbaly beneficial provisions are sought to be given to the Hindus at large. The Select Committee has of course made many changes for the better, and the Act as it stands today is an improvement on the original bill, which to say the least, was reforms let loose on our society.

Among the Hindus the marital tie and domestic life is still viewed in a light which our legislators have not realised. To impose the ideas of a few modernised groups on the masses who have lived a better and safer life is not quite proper. One can only hope that the unwanted provisions of the Act would become obsolete by disuse. The book under review is a commentary on this important legislation. The commentator has made good use of the decisions of courts under analogous statutes. The section analysis and notes are at once clear and useful. The publication is quite timely and would be found useful by the public and legal practitioners.

Studies in Muslim Law, Vol. I (Batil & Fasid Marriage) by *Dr. N. U. A. Siddique*, M.A., B.C.L. (OXON)LL.D. (DUBLIN) BAR-AT-LAW. Dean of the Faculty of Law, Dacca University (1955) Price Rs. 15.

This is a original scholarly work on a branch of Muslim Personal Law—namely marriages. Though there has been in recent years a spate of legislation affecting the customary personal laws of the people of this country, Muslims, as a class have not been affected much by these. They are still governed by their personal laws as laid down in the sacred texts and as interpreted by judicial decisions. As in the case of Hindu Law, where the law as expounded by the judicial decisions have sometimes been quite opposed to the ancient texts, so in the field of Muslim law, the interpretation of certain Quranic texts by the courts have not been quite happy or accurate.

The learned author of this treatise has gone deep into the sources of the law and has pointed out the rather illogical, if not incorrect developments of the law in modern times. Text-books on Muslim Law like Ameer Ali's, Baillie's and Mulla's are quoted *in extenso*. Whether the Muslim society could at this distance of time adopt the more accurate form of the textual law, superseding the established law of the courts these long decades, is a doubtful matter. The value of the present book is not so much in its practical utilitarian text-book character but in its scholarly research. It is an eye opener to students and jurists who are interested in the academic study of the law and its history.

Jurisprudence by *M. J. Sethna*, PH.D. (Bom.), BAR-AT-LAW, published by Lakhani Book Depot, Bombay-4. Price Rs. 10 -.

The book will be welcomed by students of law in the several Universities. With his experience as a Professor of Law the Author has dealt with this abstract

subject in a simple and interesting manner. Standard works of Analytical Jurisprudence like Austin and Salmond and authoritative works on the history of the law like Maine, Holmes, Holdsworth are quoted in appropriate places. Though essentially a student's book it is not without its use to the lawyer who might have occasion to go to the principles and basis of the law.

EXPERT EVIDENCE (Medical and Non-medical) by *Y. H. Rao*, Advocate. Published by Criminal Law Publications, Gudur (Nellore Dt.), Price Rs. 17-8-0.

This is yet another volume in the author's series of publications on the Law of Evidence. The prior volumes dealing with circumstantital and presumptive evidence, admissions and confessions, accomplices and approvers, *etc.* have been reviewed by us and we have nothing but praise for the great service the author is rendering by his exhaustive and analytical treatment of the special branches of the Law of Evidence. The system of grouping the several decisions, statewar, under the relevant statutory provision is at once useful and interesting. Though the book is not a regular commentary on any statutory provision and one would not find it complete as a text book, still the author has adopted a system of treating the subject under several heads, each in a separate chapter.

Expert evidence is still a field in which many lawyers and Judges have not probed with their usual searching intelligence. It may be partly due to the fact that the expert talks some highly technical language which the laymen do not grasp. But it is due mainly to the fact that the courts, in the absence of any other evidence, takes the expert evidence as an impartial exposition of the probabilities and the lawyers, eminent as they may be, are not equipped or qualified to directly attack or contradict his testimony.

The book under review will be found useful to lawyers and investigating officers.

HAND-BOOK OF MERCANTILE LAW by *E. Venkatesam*, B.A., M.L., Advocate, Supreme Court and High Court, Andhra, Guntur, with a Foreword by Hon'ble Mr. Justice K. Subba Rao, Chief Justice, High Court of Andhra. Third edition (1955), Price Rs. 11.

This hand-book deals with a vast subject and is intended for students of commerce. The learned author with his experience as a Lecturer has dealt with the subject in a compendious manner. The principles of the law are stated in simple, clear and concise manner with reference to the more important decisions—English and Indian. The book deals with the principles of the Law of Contract, Sale of Goods, Partnership, Carriers, Companies, Insurance, Insolvency and Arbitration. As such, the book is very useful to students of Accountancy and Commerce in the Universities and students of law.

That the book has gone through three editions is proof positive of its utility and popularity. As the learned Chief Justice of the High Court of Andhra points out in his preface, the book will be found useful not only by the students but also by the merchantile community.